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EXAMINER
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SIDDIQI, MOHAMMAD A

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOSE COSTA REQUENA

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Appeal 2009-006487  
Application 10/023,456  
Technology Center 2400

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Decided: June 21, 2010

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Before, ROBERT E. NAPPI, MARC S. HOFF, and  
DEBRA K. STEPHENS, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 17-21.<sup>1</sup> We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

## INVENTION

The invention is directed to a system and method of sharing content between an inviting user and an invited user. The system and method uses an application layer control protocol to communicate a presence query from a presence server to the central server. The central server then determines whether the content should be stored, refused, or sent to the user. *See Spec:* 1-7. Claim 17 is representative of the invention and reproduced below:

17. System, comprising:

a central server, responsive to an invitation message from an inviting user to exchange content with an invited user, for providing a presence query; and

a presence server, responsive to said presence query, for providing presence information relating to a registered user,

wherein said central server is responsive to said presence information relating to said invited user registered at said presence server, for use in deciding whether said content is sent to said invited user, stored or refused, wherein said presence query and invitation message are communicated according to an application layer control protocol and wherein said presence information relating to said registered user pertains to a spatial location of said registered user.

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<sup>1</sup> Claims 1-16 and 22-25 were cancelled in response to an Restriction/Election Requirement, mailed March 7, 2005.

#### REFERENCES

Dalal	US 2002/0065894 A1	May 30, 2002 (filed Nov. 30, 2000)
Armstrong	US 6,807,423 B1	Oct. 19, 2004 (filed Dec. 14, 1999)

#### REJECTIONS AT ISSUE

Claims 17-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dalal in view of Armstrong.

#### ISSUES

*Rejection of claims 17-21 under 35 U.S.C. § 103(a) as being unpatentable over Dalal in view of Armstrong*

##### *Claims 17 and 21*

Appellant argues on pages 4-6 of the Appeal Brief and pages 2-3 of the Reply Brief that the Examiner's rejection of claim 17 is in error. Appellant argues that Dalal in view of Armstrong does not disclose "deciding whether content is sent to an invited user, stored, or refused" as disclosed in independent claim 17. App. Br. 4; Reply Br. 2. Appellant additionally argues that dependent claim 21 is in error for the same reasons as the claim from which it depends, independent claim 17. App. Br. 6.

Thus, Appellant's contention with respect to claims 17 and 21 presents us with the issue: Did the Examiner err in finding that Dalal in view of Armstrong discloses deciding whether content is sent to an invited user, stored, or refused?

*Claims 18-20*

Appellant argues on pages 6 of the Appeal Brief that the Examiner's rejection of dependent claims 18-20 is in error for the same reasons as independent claim 17. Appellant additionally argues on pages 6-8 of the Appeal Brief and pages 3-5 of the Reply Brief that the portion of the Dalal reference used to reject claim 18 is not found in the provisional application. App. Br. 7. Appellant, therefore, argues that the Dalal reference does not properly antedate claim 18. App. Br. 7; Reply Br. 4.

Thus, Appellant's contention with respect to claim 18, and claims 19-20 which ultimately depend upon claim 18, presents us with the issue: Did the Examiner err in finding that the provisional application of Dalal contains the claim limitations found in claim 18?

FINDINGS OF FACT (FF)

*Armstrong*

1. Armstrong discloses a personal communications portal (PCP) that provides information about a watched party. The watched party sets rules that define how the watched party may be contacted, by whom, and at what times. Col. 4, ll. 24-25 and col. 5, ll. 23-34.
2. When the watched party sets a rule that refuses an instant message after a particular time, the request to send an instant message is refused by the PCP. Additionally, the refused messages may be buffered (i.e., stored) until the watched party is available. Col. 7, ll. 11-17.

3. The PCP may also be configured to send communications and emails to a watched party even when the watched party is not available. Col. 7, ll. 20-26.

### ANALYSIS

*Rejection of claims 17-21 under 35 U.S.C. § 103(a) as being unpatentable over Dalal in view of Armstrong*

#### *Claims 17 and 21*

Appellant's contentions have not persuaded us of error in the Examiner's rejection of claims 17 and 21. Independent claim 17 recites "wherein said central server is responsive to said presence information relating to said invited user registered at said presence server, for use in deciding whether said content is sent to said invited user, stored or refused." Appellant argues that neither Dalal nor Armstrong discloses a central server that decides whether content is sent to an invited user, stored or refused. App. Br. 4; Reply Br. 2. Appellant argues that Armstrong teaches monitoring the presence of users, determining whether the watched party is available, and deciding what mode of communication is used. App. Br. 5; Reply Br. 2. While we agree with Appellant on these contentions, the Examiner has identified other portions of Armstrong that disclose the claimed limitations. Ans. 4-5. For instance, Armstrong discloses deciding when to send content by allowing a PCP to send a message to the user even if the user is not currently available. FF 1, 3. In addition, Armstrong discloses deciding whether to store the content by allowing the PCP to buffer (i.e., store) the messages until the user becomes available. FF 1, 2. Finally, Armstrong discloses deciding whether to refuse the content by allowing the PCP to refuse a request to send content after a predetermined

time, according to rules set by the user. FF 1, 2. Therefore, Appellant's arguments are not found to be persuasive and we sustain the Examiner's rejection of claim 17 and claim 20 that depends upon claim 17.

*Claims 18-20*

Appellant's contentions have persuaded us of error in the Examiner's rejection of claims 18-20. Appellant argues that the teachings of Dalal relied upon by the Examiner to reject claim 18 and claims 19-20 that depend upon claim 18, does not contain adequate support in the provisional application to warrant the earlier filing date. App. Br. 6-7; Reply Br. 3. The Examiner finds that, according to MPEP § 2145, Appellant must provide an affidavit or declaration as evidence that the invention date preceded the date of the reference. Ans. 10. While we agree that affidavits and declarations are required in that circumstance, the Examiner misses the point of Appellant's argument. Appellant is arguing that the provisional filing date of December 3, 1999 is not sufficient because the information used in the non-provisional reference was not adequately supported in the provisional application 60/168,881. App. Br. 6-7. Since the Examiner has not addressed this issue, the Examiner has not provided sufficient evidence to show that the portion of Dalal relied upon to reject claim 18 is prior art. As a result, we will not sustain the Examiner's rejection of claims 18-20.

**CONCLUSION**

The Examiner did not err in finding that Dalal in view of Armstrong discloses deciding whether content is sent to an invited user, stored, or refused.

The Examiner erred in finding that the provisional application of Dalal contains the claim limitations found in claim 18.

#### SUMMARY

The Examiner's decision to reject claims 17 and 21 under 35 U.S.C. § 103(a) is affirmed.

The Examiner's decision to reject claims 18-20 under 35 U.S.C. § 103(a) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136 (a)(1)(iv).



AFFIRMED-IN-PART

ELD

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